

071618732 [2008] RRTA 32 (5 February 2008)

DECISION RECORD

RRT CASE NUMBER: 071618732

DIAC REFERENCE(S): CLF2007/90028

COUNTRY OF REFERENCE: Nepal

TRIBUNAL MEMBER: Samuel Blay

DATE DECISION SIGNED: 5 February 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

Background

The applicant is a citizen of Nepal. He applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. In a statement which accompanied his primary application, the applicant claimed that he left Nepal because there was “great fright” to his life. He claimed that he was being tortured mentally and physically and that he was bashed “near to death” He further claimed that “they” were also harassing himself and his family constantly with ‘verbal threats’. He claimed that the threats were carried out by Maoist militia and ‘lately’ by young Communist League members who are the “subordinates of the Nepal Communist Party (Maoists).” The applicant also claimed that “they” have exercised control over his property. He then said that “all this happened due to [his] affiliation with [a particular group] and being an active member of [Political Party X]”. The applicant also said:

to get away from this constant torture, violence and threat against me and my family I decided to leave Nepal.

He also claimed that in 2006 he and a group of associates organised a secret meeting to mark a special occasion for royalists. He claimed that on that day Maoist militia found out about the gathering and that he was kidnapped by the members of the militia. He said following the intervention by his party members and his family, and with the assistance of “[a human rights group]” who requested his release, he was freed. He claimed he was released after several days in the presence of the human rights group.

The applicant further claimed that when he was kidnapped, he was blind-folded and taken to an unknown place where he was tortured. He claimed he was tortured because of his affiliation with Political Party X which is a royalist movement with which he was well known to be associated. He claimed that he was kidnapped because of his strong connection with the royalist movement. He said that he suffered a lot of pain and bruises as a result of the injuries he sustained. He went to see a doctor who prescribed specific medication for him. He claimed the doctor told him that

a body part had been damaged severely as a result of the beating he received. He claimed that “up today” he still carries that injury.

When asked what he thought might happen to him if he went back to Nepal, the applicant responded as follows:

The biggest fear that I have is the security of my life and the safety of my family. I couldn't go back to Nepal due to the great danger that I will face upon arrival there. The recent activity that I have collected from my contacts and party members is that, they are continuously sending letters asking about my whereabouts and family members.

The applicant claimed that this has “displaced” his family. He also said that his family is constantly moving around in order to escape from the militia and the Maoists.

When asked about who he thought might harm or mistreat him if he returned to Nepal, he said that the main threat would come from the Maoist and their supporters. He also claimed that they were looking for him.

He was also asked why he thought anything could happen to him if he went back to Nepal. He said as follows:

I have constant fear of persecution if I go back to Nepal in the hands of the YCL. This will happen to me because I am still an active member of [Political Party X] and have close ties to [a particular group] and also strongly support the Royalist Movement.

He was also asked if he thought that the authorities of his country would or could protect him. He said that the authorities would be unable to protect him because even the Prime Minister of the country has stated recently that the YCL is really “a young criminal league” which makes it quite clear that the Prime Minister cannot control the YCL and the militia of the Maoist Movement.

In support of his claims that he is closely associated with a prominent person (Person A), the applicant provided two photographs of himself in the company of Person A. He claimed that because of being closely associated with Person A he has become very much a Royalist in Nepal. The applicant further claimed that he went to different cities and places with Person A. He said

“we used to hang out together in [City Y] too.” He claimed he has been with Political Party X for many years.

The applicant further claimed that he has an affiliation with the monarchy and that being a member of anti-republican party like Political Party X he has been subject to torture.

In support of his claims, the applicant submitted internet articles on the political instability in Nepal and the role of the Maoist Movement in that country. He further provided what he claimed was a newspaper clipping which contained an article about the seizure of his property in Nepal.

The Decision of the Delegate

The delegate of the minister considered the applicant’s application. After a consideration of the facts, the delegate noted that he accepts “prima facie that the applicant is a supporter and member of [Political Party X] and the Royalist Movement in Nepal.” The delegate however noted that he does not accept that the applicant held any political or royalist profile that could have caused the applicant to suffer persecution in the past and neither does he accept that the applicant’s political opinion will cause him to face a real risk of persecution in the reasonable future.

The delegate also noted that in spite of the applicant’s claims that he has “strong connection” to Person A and the Royalist Movement, his claims are “broad, vague and general” and that the applicant has not provided any details of his particular and specific involvement with Political Party X.

The delegate further noted that the applicant has two photographs of himself and Person A on the file. However, “mere photographs in themselves are not indicative of the strong ties claimed by the applicant.” The delegate further concluded that the applicant has not provided any specific detail regarding his continuous harassments from Maoists up until the month in which he claimed he was kidnapped and nor has he provided any detail about the displacement from his home aside from the very vague and general claim that they have “captured” his house and his property.

In support of his claims, the applicant included an internet site article from Website 1 entitled “Maoists capture [property] of [Applicant].” The delegate considered this article but rejected it on the basis that it has been fraudulently included. The delegate noted that the article which the

applicant purports to have downloaded from the internet was not genuine because the article does not appear in the same way as other articles published in the same Website 1 site. He further noted that the article contains poor grammar and sentence structure which was not consistent with other news items from that website. He also explained that when he conducted an internet search he could not find that article on the website. He took the view that the article did not exist. Finally, the delegate also took the view that it was unlikely that Website 1 would publish an article on the Maoist seizure of one person's house. The delegate concluded that the article is a fabrication.

The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The application to this Tribunal

The applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal also finds that the applicant has made a valid application for review under s.412 of the Act.

In his application to this Tribunal, the applicant submitted a written statement in which he repeated the claims that accompanied his primary application. He also submitted that he could not relocate elsewhere in Nepal as he would be found by the violent Maoist militia. He claimed even though he lived in City Y before he came to Australia, he was fearful for his safety and rarely went out. He concluded by saying that if he returned to Nepal he would face persecution at the hands of anti-monarchists. He also claimed that he was a victim of political violence inflicted by Maoists and anti-monarchists.

Hearing before the Tribunal

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali (Nepalese) and English languages.

At the hearing, the applicant repeated the claims in his written statements. He said that because he is a royalist, he has been targeted by anti-royalist groups in Nepal. He repeated his claim that he was close to Person A. The Tribunal noted to him that Person A himself seems to be able to

live in Nepal and so the Tribunal sees little reason why he, the applicant is unable to live in Nepal too.

He said the party to which he belonged is now operating underground. The Tribunal noted to him that what he has said is implausible as the party he claims to belong to is well known in Nepal and is recognised as one of the political parties in the country. The Tribunal noted to him that his claim that the party operates underground was never included in his written statement. The applicant responded by saying that he was confused when he was writing his statement and so he had not included it. He claimed that other members of the party have gone into hiding. He also claimed that because the party is identified with the monarchy, the party must have been the target for anti-monarchist groups.

In answer to questions from the Tribunal, the applicant claimed that he has worked with the party for a number of years. He also claimed that until two years ago, the King was in control of the situation in Nepal and so things were considerably different. He said now the King has no control and this has brought a lot of difficulties to members of Political Party X.

Next, the Tribunal spoke to the applicant about his claims of being kidnapped. He repeated claims that he was kidnapped and tortured. The Tribunal put it to him that his claims about being kidnapped are not plausible.

The applicant also spoke about the seizure of his property. He also claimed that he has faced many threats from the Maoists but in spite of this he has persisted in his support for the monarchy. He submitted a medical certificate from a hospital in City Y indicating that he had suffered an injury.

The Tribunal also heard oral submissions from the applicant's advisor. He argued that there is a referendum about to be held in Nepal and that this would most likely result in the abolition of the monarchy. He said this was likely to compound problems faced by the pro-monarchy groups. He repeated the claims by the applicant that his party has been associated with the pro-monarchy group in Nepal and that this has made it very dangerous for them in the country.

The applicant and his advisor also indicated that they were willing to provide a letter from his political party to attest to his claim that he was a member of the party back in Nepal.

Post-hearing Submissions

In post-hearing submissions to the Tribunal, the applicant submitted a letter purportedly written by a prominent politician in Nepal (Person B) The letter was written on a letterhead of Political Party Z and provided as follows:

This is to state that [Applicant] of [address] of Nepal is known to me for more than a decade. He has been an active member of [Political Party Z]. Given the current situation in Nepal he was kidnapped and tortured by the Maoists as he is opposed to ultra left ideology and believes in democracy and constitutional monarchy. Should he return to Nepal he would be still at risk to incur harm from the Maoists. I therefore, request concerning authorities to consider over his physical safety and thus to provide him with the protection.

I hope that his case will be sympathetically considered.

I wish him every success. Thanks.

The Tribunal sent a letter to the applicant in pursuance of Section 424A of the Act requesting further information and asking the applicant to resolve a number of inconsistencies. The letter to the applicant relevantly provided as follows:

Dear [Applicant],

1. At the recent Tribunal hearing, you claimed that you were targeted by Maoists and that your [property] was seized by them. In support of your claim you submitted a news item from an internet site. The item is entitled ‘Maoists capture [property] of [Applicant]’. You claimed that the news item was taken from "[Website 1]" and was published on [date]. Upon careful perusal of the article, the Tribunal has concluded that it is not genuine because:
 - this article does not appear in the same manner as the other 14 articles you submitted from "[Website 1]" The Tribunal notes particularly that the specific website address for this article is not displayed at the bottom of the page as is the case in all 14 other articles submitted from this website;
 - The article contains poor grammar and sentence structure with the content of the article making limited sense. Such issues and deficiencies are not evident in the other 14 articles submitted by the applicant from "[Website 1]";
 - The Tribunal notes that the Department’s research conducted on 2 July 2007 and further subsequent research by the Tribunal on the archives of "[Website 1]" website at [Website 1] for both the month and specific date this article purports to have been published (i.e.[date]) does not indicate that such an article was ever published by the website as you claim. All other 14 articles submitted by you from "[Website 1]. (published on dates ranging from [date] - [date]) were accessible on an archives search of

the website.

- It seems unlikely that the "[Website 1]" would report on the Maoist seizure of one person's house.
2. The reasons listed above lead the Tribunal to conclude that the document containing the news item is a fabrication. This further leads the Tribunal to conclude that the authenticity and genuineness of other documents you submitted, for example a facsimile purporting to be from [a prominent member of Political Party X] claiming that your [property] has been seized by Maoists and you been threatened and targeted by Maoists in Nepal, are also fabrications.
 3. In your written statement you also claimed that during the height of Maoist insurgent activity in [year], you traveled to [Country V] in [month, year] for [a number of] days for "leisure" . The Tribunal finds that the act of voluntarily returning to a country you claim to fear persecution from during a period of civil war, violence and political instability is generally inconsistent with your claims that you subjectively feared harm from Maoists during such time.
 4. In your submissions to the Tribunal you also claimed that in [month, year], you were kidnapped while you were secretly [marking an occasion of importance to royalists] In the Tribunal's opinion it is reasonable to conclude that had a Maoist attack occurred on a group [marking such an occasion] then some media report would have existed reporting on this high profile incident. Your failure to provide the Tribunal with any credible and independent evidence or report to corroborate your claims leads the Tribunal to doubt the veracity of your claims.

The applicant responded to the Tribunal's 424A letter and provided the following statement.

I wish to make the following comments as to the reasons of the Tribunal.

I will be a victim if the Tribunal concludes that the authenticity and genuineness of my documents and my claims are fabrications. The fact is that Maoists have seized my [property] and [property] and I have been targeted by them as I am a royalist and I am opposed to the Maoists. The Tribunal should not put material weight on the finding that documents are not genuine whereas they are genuine documents and I am a credible witness as to the veracity of my claims.

I was stunned by the information regarding the article that it was not found in the archive of [Website 1] when I received the letter from the Tribunal, so I enquired about the article with the people of [Website 1] and I received the response from the authorised editor of [Website 1] that it was not existed in the archive due to a minor mistake but the edited version is back in the archive now. In this regard, I would like the Tribunal to revisit [Website 1] for the article. The letter from the [prominent member of Political Party X] confirming that the Maoist has seized my [property] and threatened me in Nepal is not fabricated but genuine in every aspect. In this regard, the Tribunal can contact the [prominent member of Political Party X] on [phone number] (Home) [phone number] (Office). He can be directly contacted on his mobile no. [phone number]. Queries can be forwarded to his [secretary] on the office number.

It's a matter of my life and I can not afford to be a victim of the impulsive decision. The

reality is that I will be killed by the Maoists if I am forced to return to Nepal. I would like the Tribunal to re-examine the documents if it has already concluded that the submitted documents are not genuine.

I did not provide any fabricated documents to the Tribunal in support of my claims so the Tribunal should consider my claims on a basis of good faith and the fact that I have the problems with the Maoists.

My act of voluntarily returning to Nepal should not be viewed adversely as to the fear of persecution. I traveled to [Country V] for [a number of] days for leisure. At that time, the King had the active power in the country and [a member of government] was [a former prominent member of Political Party X]. During that period I was capable to protect myself because [City Y] was not heavily occupied by the Maoists but the Royal Nepalese Army and the government was run by the King and security was provided to the royalists. After the abolition of the Monarchy, it became extremely unsafe for us who are royalists and known to the Maoists.

I insist that I am truthful about my claims and I explained the problems in a lucid manner as I had experienced. I believe there must be some sort of media report but I am unable to provide it to the Tribunal because I am here in Australia so I should not be expected to provide everything that needs to be credible evidence in form of documents as I articulated my fear and problems at the hearing before the Tribunal. My failure to provide the Tribunal with any credible and independent evidence or report to assist my claims should not be viewed adversely when making a decision in my application for a protection visa. In this regard, I should be given the benefit of the doubt as to it is hardly possible for a refugee such as myself to prove every part of my case.

It will be unfair if the Tribunal views my evidence adversely because of my failure to provide the evidence or report in relation to my claims. I submit that Nepal is a country where corruption and arbitrary power dominate the society, so it is hard to get decent information, independent report and evidence. I believe some sort of media report should have been existed in some parts of Nepal on the issue of attack on us by the Maoists while we were secretly [marking an occasion of importance to royalists]. I am unable to provide it because I am here in Australia. It was extremely unsafe for me to look for the report about the Maoists attack in Nepal. I presented my story genuinely without embellishment about the attack on us, so it should not be an issue of credibility.

I was involved in politics as well as business. I had a business worth [a significant amount of money] I had submitted the documents of my business to the Tribunal. Apart from the business, I had one another partnership business with [Person C] and the name of the company was [Company 1] It was also closed down because of the Maoists.

My fear of being seriously harmed or killed by the Maoists is inevitable based on the fact that the Maoists have harmed me in the past because of what they see as my close association with [information deleted: s. 431] [Person A]. I have been through the painful circumstances resulted from the Maoists.

I would like the Tribunal to act in good faith and consider my application with compassionate heart.

The applicant's agent also requested a further fourteen days extension to provide documents in response. The Tribunal informed the applicant's agent that the request for an extension of time to permit the submission of further documents would not be granted. The Tribunal explained to the applicant's agent that they had not provided any valid reasons for the request. In rejecting their application for extension of time, the Tribunal took account of the fact that they had sufficient time from the period when the 424A letter was written to them up until the response period. The Tribunal also took account of the fact that the applicant had in fact provided responses to the 424A letter which had indicated specific issues that needed the applicant's response. The Tribunal further took account of the fact that even though the applicant's agents had indicated that they needed a further fourteen days for them to submit additional documents, they had made no efforts to submit such documents by the date of the Tribunal's letter.

The Tribunal received a letter from the applicant's agents to advise the Tribunal that the agents have been able to gain internet access to the information on Website 1 which reported the confiscation of the applicant's property by the Maoists.

The applicant submitted a letter which he claimed was written by Person A. The letter stated as follows:

This is to state that [the applicant], a resident of [address] is well known to me. I have found him to be devoted towards constitutional monarchy and democracy. But due to the changing political scenario in our beloved country people like him have often been repeatedly the target of abduction and torment. I am melancholic that this has happened to him also. I only wish for his safety wherever he may be.

May Lord Pashipatinath bless us all.

The applicant's agent submitted further information advising the Tribunal that the 'Nepalese Parliament voted on the 23 December 2007 to move towards the abolition of the monarchy'. The agent argued that this situation 'highlights the hostility towards those associated with the monarchy' and that 'the Tribunal cannot conclude with certainty that the applicant will not face serious problems because of his previous association with the monarchy in the foreseeable future if he were required to return to Nepal'

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-

fetches possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

FINDINGS AND REASONS

The central claim of the applicant is that he was a monarchist in Nepal. He claimed that he was associated with Political Party X and that he was also a close associate of Person A. The applicant's claims are thus founded on the fear of persecution for his political beliefs or opinion. The Tribunal will examine these claims.

Claims of Association with Person A

The applicant claims that he was closely associated with Person A and that "they used to hang out together" The Tribunal notes that the applicant provided two photographs of himself in the company of Person A. In the photographs, the applicant was also in the company of other persons as well as Person A. The two photographs submitted by the applicant appear to have been taken at the same event. In the Tribunal's opinion there is nothing in the photographs that suggest a close association as to warrant the applicant being subject to persecution. The Tribunal is of the view that where an applicant seeks to allege that his close association with a particular personality has resulted in his or her persecution, the very least that applicant can do is to provide some coherent and credible evidence beyond a mere photograph to establish his case. However, the Tribunal also notes that the applicant has provided a letter purportedly written by Person A in which he claims that the applicant is well known to him.

The Tribunal notes that the letter was written on the letterhead of Person A. The Tribunal has no effective way of testing the authenticity of the letter. On the other hand, the Tribunal has no basis

for doubting its authenticity. In the circumstances, the Tribunal gives the applicant the benefit of the doubt and finds that based on the evidence, it is more probably than not that the applicant was well known to Person A. The Tribunal further finds that the applicant's close association with Person A could have brought him (the applicant) to the adverse attention of opponents of the monarchy and Person A.

Claims of persecution for his association with Political Party X and Political Party Z

The Tribunal also takes note of the applicant's claim that his difficulties with the Maoists militia and their Youth League in Nepal stem primarily from the fact that he is closely associated and indeed an active member in Political Party X. The Tribunal notes that in spite of the applicant's claims that he has worked closely with Political Party X in Nepal he provided very little official evidence from the party. Instead, the applicant chose to provide several internet-based articles concerning Political Party X and their activities in the country. The evidence as provided by the applicant in this regard is hardly persuasive.

The Tribunal notes however that the applicant submitted a letter signed by a prominent member of Political Party X indicating that the applicant has been targeted by Maoists and the YCL. The Tribunal further notes that the applicant was provided with a letter supposedly written by Person B. The letter was written on the letterhead of Political Party Z. The letter simply indicated that the applicant was an active member of Political Party Z. Like the letter written by a prominent member of Political Party X, that the letter from Person B indicates that the applicant was an active member of Political Party Z and was for that matter subject to torture and harassment by opponents of the party.

The Tribunal has examined these letters carefully. The Tribunal notes that it has no effective means of checking their authenticity. However in view of the Tribunal's earlier finding that the applicant's close association with Person A could have brought him to the adverse attention of the opponents of the monarchy, the Tribunal finds that it is more probable than not that the letters represent an accurate indication of the applicant's affiliation with the political parties and the adverse interest in him by the opponents of the parties.

The applicant's responses to the 424A Letter

The Tribunal notes that when the applicant was asked to comment on adverse information relating to articles with which he claims were taken from the internet, his responses were far from persuasive. The Tribunal notes the applicant's claims that he inquired from Website 1 as to why the news item concerning his claims was not on the internet as he had said before. The Tribunal further notes the applicant's submission that he was informed by Website 1 that "there had been a minor mistake" and that the edited version is now in their archives. The Tribunal notes that the applicant invited the Tribunal to revisit the website and further provided the home, office and mobile telephone details of the editor of Website 1 and requested that the Tribunal calls the numbers to verify his account of why the article had not been on the website. The Tribunal did not take up the invitation to revisit the website or to call the telephone numbers provided by the applicant. This is because the Tribunal does not accept the applicant's claims that the Website 1 website had somehow omitted the particular article from the internet site because of a minor mistake. More significantly, the Tribunal further notes that the applicant did not provide any official explanation as such from Website 1 attesting to his claim that somehow the material he alleged was on their website had been omitted because of a 'minor mistake' as he claimed.

The Tribunal further notes that by the applicant's own admission, 'Nepal is a country where corruption and arbitrary power dominate the society, so it is hard to get decent information, independent report and evidence' This admission by the applicant hardly inspires confidence in the authenticity of the article on the alleged Maoists capture of the applicant's property on Website 1 or in the invitation by the applicant to call the editor of Website 1 at his home, office or on his mobile phone. The Tribunal's conclusion in this regard is reinforced by the fact that not only was the article not on the website and also absent from the archives for articles published on the alleged date of the article, but that the article was in a different format when compared to 14 other articles from that website. This was drawn to the applicant's attention in the 424A letter, but the applicant made no comment in response. On the evidence before it, the Tribunal does not find the internet article from Website 1 authentic. The Tribunal is of the view that the applicant 'planted' the article to embellish his claims. The Tribunal rejects the applicant's claims as based on that evidence accordingly.

Claims that he was kidnapped and tortured

The Tribunal notes the applicant claims that he was kidnapped because of his association with and support of the monarchy and involvement with Political Party X. He further claims that as a result of the torture he was subject to at the hands of his captors, he suffered injuries to a body part. To assist this claim he submitted a medical certificate from a hospital. While the certificate indicates that the applicant presented at the hospital with an ‘excruciating ... pain’ and bodily injuries consistent with ‘physically inflicted trauma’, the certificate offers no assistance as to the origins of the injuries. Given the Tribunal’s finding that the applicant was a well known associate of Person A and that their association could have brought him to the adverse attention of opponents of the monarchy, the Tribunal finds that it is easily probable that the applicant may have been subject to persecution by such opponents resulting in his injuries.

Claims that his family faces harassment

The claim of the applicant is that his family has been subject to harassment and that his property has been seized because of his political association with Political Party X and Political Party Z and his known Royalist position in Nepal. The applicant did not provide any credible evidence to support his claims that his family has been subject to harassment. However it is plausible that given his professed support for the monarchy in Nepal, his family could be a target for his opponents. The Tribunal is accordingly satisfied that the applicant’s family faces persecution because of the applicant’s association with the pro-monarchy movement in Nepal.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant satisfies the criterion set out in s.36(2) of the Act for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.
Sealing Officer's I.D. PMRTDJ